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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/092,320	03/06/2002	Jack R. Kries	DP-306837 7500/141	9018

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EXAMINER

WILLIAMS, THOMAS J

ART UNIT	PAPER NUMBER
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3683

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/092,320	Applicant(s) KRIES ET AL.	
	Examiner Thomas J. Williams	Art Unit 3683	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-5, 7, 14-16 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by US 4,986,510 to Bellamy et al.

Re-claim 1, Bellamy et al. disclose a powertrain mount, comprising: an upper orifice plate 10; a lower orifice plate 9; a generally planer diaphragm 8 with an enlarged central node and a periphery, the central node is in constant contact with the upper orifice plate and the lower orifice plate, the periphery is spaced apart from both the upper orifice plate 10 and the lower orifice plate 9 and is free to move between the upper orifice plate and the lower orifice plate, see figure 3 and column 2 lines 52-55.

Re-claims 2 and 4, the upper orifice plate and lower orifice plate includes a plurality of holes through which fluid may flow, see column 2 lines 34-35.

Re-claims 3, 5, 15 and 16, the holes have a generally circular cross section, as illustrated in the figures. The phrase “generally” is broadly interpreted to include shapes not being perfectly circular. It is noted that circular holes are illustrated throughout the prior art.

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Re-claims 7 and 18, the upper 10 and lower 9 orifice plates define an orifice track 7. A portion of plate 10 defines a portion of the orifice track at the fluid connection between orifice track 7 and fluid chamber A.

Re-claim 14, Bellamy et al. disclose a powertrain mount, comprising: an upper orifice plate 10 having a plurality of holes, see figure 2; a lower orifice plate 9 having a plurality of holes, see figure 2; a generally planer diaphragm 8 with an enlarged central node and a periphery, the central node is in constant contact with the upper orifice plate and the lower orifice plate, the periphery is spaced apart from both the upper orifice plate 10 and the lower orifice plate 9 and is free to move between the upper orifice plate and the lower orifice plate, see figure 3 and column 2 lines 52-55.

3. Claims 1-3 and 7 are rejected under 35 U.S.C. 102(e) as being anticipated by US 6,505,822 to Yamamoto et al.

Re-claim 1, Yamamoto et al. disclose a powertrain mount, comprising: an upper orifice plate 11; a lower orifice plate 12; a generally planer diaphragm 13 with an enlarged central node 33 and a periphery 34, the central node is in constant contact with the upper orifice plate and the lower orifice plate, the periphery is spaced apart from both the upper orifice plate 11, see column 6 lines 43-45 and figure 4, and the lower orifice plate 12 and is free to move between the upper orifice plate and the lower orifice plate, see column 6 lines 43-45.

Re-claims 2 and 3, the upper orifice plate 11 includes a plurality of holes 16 through which fluid may flow, the holes have a generally circular cross-section, see figure 2.

Re-claim 7, the upper and lower orifice plates define an orifice track 9/92.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 6, 8-13 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bellamy et al. in view of US 5,104,100 to Simuttis.

Re-claims 6 and 17, Bellamy et al. fail to teach the periphery of the diaphragm having a raised rim. Simuttis teaches a powertrain mount having a diaphragm located between an upper orifice plate and a lower orifice plate. In one embodiment the periphery of the diaphragm is free to move between the upper and lower orifice plates and is provided with a raised rim, see figure 4. The raised rim portions will limit axial movement of the peripheral portions, thus modifying the damping characteristics as desired. It would have been obvious to one of ordinary skill in the art to have provided the periphery of the diaphragm of Bellamy et al. with a raised rim portion as

taught Simuttis, thus providing a means of adjusting the damping characteristics for the mount as warranted.

Re-claim 8, Bellamy et al. teach a powertrain mount, comprising: an upper orifice plate 10; a lower orifice plate 9; a generally planer diaphragm 8 with an enlarged central node and a periphery, the central node is in constant contact with the upper orifice plate and the lower orifice plate, the periphery is spaced apart from both the upper orifice plate 10 and the lower orifice plate 9 and is free to move between the upper orifice plate and the lower orifice plate, see figure 3 and column 2 lines 52-55. However, Bellamy et al. fail to teach the periphery of the diaphragm having a raised rim.

Simuttis teaches a powertrain mount having a diaphragm located between an upper orifice plate and a lower orifice plate. In one embodiment the periphery of the diaphragm is free to move between the upper and lower orifice plates and is provided with a raised rim, see figure 4. It would have been obvious to one of ordinary skill in the art to have provided the periphery of the diaphragm of Bellamy et al. with a raised rim portion as taught Simuttis, thus providing a means of adjusting the damping characteristics for the mount as warranted.

Re-claims 9 and 11, the upper orifice plate and lower orifice plate includes a plurality of holes through which fluid may flow, see Bellamy et al. column 2 lines 34-35.

Re-claims 10 and 12, the holes have a generally circular cross section, as illustrated in the figures of Bellamy et al.

Re-claim 13, the upper 10 and lower 9 orifice plates define an orifice track 7. A portion of plate 10 defines a portion of the orifice track at the fluid connection between orifice track 7 and fluid chamber A, see Bellamy et al.

Response to Arguments

7. Applicant's arguments filed July 6, 2007 have been fully considered but they are not persuasive. With respect to Bellamy et al., the recitation "a generally planer diaphragm" merely requires the element in question to substantially occupy a single geometric plane, such as a horizontal plane. Clearly, as one can note from figure 2, a single line representing a horizontal plane can be drawn through the entire diaphragm element 8. As such the diaphragm does in fact occupy a single plane and is therefore properly interpreted as a generally planer diaphragm. Furthermore, it is noted that a flexible or elastic disk or partition can constitute a diaphragm, this is consistent with the instant invention, wherein what appears to be nothing more than a disk (60) is disclosed as a diaphragm. As such it appears appropriate for the examiner to interpret disk element 8 as a diaphragm. The claims do not require the diaphragm to be substantially flat, as is apparently argued by the applicant. As such the remarks are more specific than the claim language.

With regards to Yamamoto et al., as is clearly illustrated in figure 4, the periphery is spaced apart from the upper orifice plate. The claims are not specific as to when the periphery is spaced apart from at least one of the upper or lower orifice plates, but only that at some point this situation must exist. As such Yamamoto et al. is believed to anticipate the claim language. Furthermore, the remarks submitted by the Board appear to support this position, see page 13 of the decision mailed December 12, 2006.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiries concerning this communication or earlier communications from the examiner should be directed to Thomas Williams whose telephone number is 571-272-7128. The examiner can normally be reached on Wednesday-Friday from 6:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Siconolfi, can be reached at 571-272-7124. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-6584.

THOMAS J. WILLIAMS
PRIMARY EXAMINER

TJW

August 28, 2007

Thomas Williams
AU 3683
8-29-07